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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

DA 00-397

In the Matter of)
)
Association of Local Television Stations, Inc.)
and National Association of Broadcasters)
)
Petitions for Reconsideration of)
First Report and Order)
)
Service Rules for the 746-764 and)
776-794 MHz Bands, and Revisions to)
Part 27 of the Commission's Rules)
)

WT Docket No. 99-168

REPLY COMMENTS OF GTE

GTE Service Corporation and its below-listed affiliates (collectively "GTE")¹ respectfully submit brief Reply Comments in the above-captioned proceeding, where the Commission is reviewing petitions for reconsideration, partial reconsideration and/or clarification of the Commission's service rules for the 746-764 and 776-794 MHz bands filed by, among others, the National Association of Broadcasters ("NAB") and the

¹ GTE Alaska, Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., GTE West Coast Incorporated, Contel of the South, Inc., GTE Communications Corporation, GTE Wireless Incorporated, and GTE Information Services.

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Association of Local Television Stations, Inc. ("ALTV").² These two broadcast associations object to the Commission's willingness to entertain requests associated with voluntary relocation or clearing agreements for that spectrum. They assert that such a procedure is somehow contrary to the 1997 Balanced Budget Act, which requires broadcasters to evacuate the band "after the date on which the digital television service transition period terminates, as determined by the Commission."³ The NAB also requests a revision or clarification of the Commission's Rules to reflect the NAB's view that the 2006 date for the transition is a "soft" target rather than a "hard" deadline. See NAB Comments at 6.

As GTE has already indicated in prior pleadings, the 700 MHz bands represent prime spectrum that is well-suited for next-generation wireless services. This spectrum, however, is already fraught with enough uncertainty as it is, in light of the incumbency of analog broadcasters over channels 59-69 as well as the fact that 19 broadcast allotments in that spectrum persist under the DTV allotment plan. As the Commission is well aware from its past auction experience, uncertainty is the enemy of efficiency and auction success. In this particular case, the fact that incumbent broadcasters will continue to occupy these bands is a significant factor that bidders will

² *In the Matter of Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, First Report and Order, WT Docket No. 99-168 (rel. Jan. 7, 2000) ("700 MHz Order"). See Public Notice, DA 00-397 (rel. Feb. 25, 2000).

³ See 47 U.S.C. § 337 (e)(1). See also 47 U.S.C. § 309(j)(14) ("A television broadcast license that authorizes analog television service may not be renewed to authorize such service for a period that extends beyond December 31, 2006.").

need to consider as they value the spectrum. Accordingly, GTE cautions the Commission against further exacerbating this uncertainty by entertaining these petitions for reconsideration or clarification. Importantly, if the Commission does decide to take any action that might hamper the clearing of this spectrum, it should do so prior to commencement of the auction, as subsequent action would severely upset the regime on which auction winners will have based their bidding decisions.

On the substance of the broadcast associations' petitions, GTE notes that there is nothing inconsistent between, on the one hand, mandatory clearing of the spectrum after 2006 and voluntary early relocation. Indeed, there is no inconsistency between the mandatory 2006 transition and regulatory incentives to encourage early relocation, much less the Commission's consideration of relief requests associated with clearing agreements. Accordingly, the Commission should not retreat from its commitment to consider such requests nor should it reconsider the criteria it has articulated, including the benefits to consumer from the provision of new wireless services. See *700 MHz Order* at ¶ 145. The Commission should also consider additional regulatory incentives to encourage the clearing of the bands. In that respect, GTE applauds Chairman Kennard's recently expressed preference for going beyond case-by-case voluntary agreements to accelerate relocation and deploying "an easier, more market-driven process."⁴ Indeed, broadcasters would appear to have ample relocation incentives, as the propagation characteristics of this band make it much less

⁴ "Wire Less is More," Address of Chairman William E. Kennard to the Cellular Telecommunications Industry Association, New Orleans (Feb. 28, 2000).

suitable for over-the-air broadcasting than for non-broadcast wireless services.

In any event, GTE agrees with U S West Wireless, LLC that, while Congress has *required* relocation of broadcasters at the end of the transition period, nothing in the statute *prohibits* the Commission from establishing an earlier deadline for transition.⁵ Indeed, the Commission has already acknowledged that it has this discretion.⁶ In the same spirit, the Commission should not hesitate to exercise its discretion and to intervene if necessary to prevent, for example, extortionate demands by broadcasters in relocation negotiations.⁷

Nor does the December 31, 2006 sunset date become somehow a “soft target” only because the broadcasters have available to them certain narrow grounds for requesting extensions of that date. See 47 U.S.C. § 309(j)(14). In any event, NAB’s characterization does not provide a basis for revision of the Commission’s Rules. These rules provide already that there will be no requirement to protect broadcast operations after December 31, 2006 “unless otherwise directed by the Commission.”

⁵ Nor can such a prohibition be read in the requirement that the Commission should establish “technical” restrictions for protecting analog television service in the interim, see 47 U.S.C. § 337(d)(2).

⁶ See *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order, 13 FCC Rcd. 6860, 6889 ¶ 83 (1998) (“the Balanced Budget Act requires us to reclaim the analog spectrum by December 31, 2006, and has established specific circumstances under which we are to grant stations an extension of that date. Although we have discretion to set an earlier deadline, we decline to grant in this proceeding the request of Los Angeles for an earlier recovery deadline . . .”).

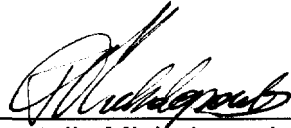
⁷ In fact, further certainty in the form of mandatory requirements would lead to higher auction proceeds and expedite carriers’ ability to deliver next-generation wireless services.

See 47 C.F.R. § 27.60(e). That exception is adequate to cover any possibility that the Commission may grant an extension of the December 13, 2006 sunset for certain broadcasters.

In conclusion, GTE urges the Commission to do nothing that would further increase the uncertainty already surrounding the spectrum, but in any event to act prior to the commencement of the 700 MHz auction.

Respectfully submitted,

GTE Service Corporation and its
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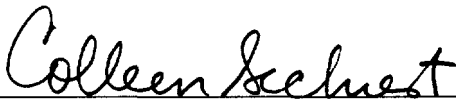
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